

# **FACT APPENDIX**

**DECLARATION OF PATRICIA GOMERSALL**  
**PURSUANT TO 28 U.S.C. § 1746**

I, Patricia Gomersall, hereby make the following declaration based upon my personal knowledge:

1. I am a Senior Futures Trading Investigator in the Division of Enforcement at the Commodity Futures Trading Commission in Washington, D.C. I have worked in this capacity for the Commission since August 1987.

2. I am submitting this declaration as part of Plaintiffs' Memorandum of Law in Support of Support of the Receiver's Motion for "Show Cause" Hearing To Hold Defendant Simon Batashvili ("Batashvili") In Civil Contempt

**II. Summary**

3. A true and correct copy of the pertinent parts of the transcript of Batashvili's asset deposition on November 4, 2020 is attached hereto as Exhibit 1.

4. A true and correct copy of the pertinent parts of the transcript of the Court's December 4, 2020 contempt hearing is attached hereto as Exhibit 2. In this colloquy, the Court found Lucas Asher's answers "a bit troubling or perhaps not coming full circle." Page 154 at 10-11. The continues "No, no, no, no. Let me drive up and blow the horn again." Page 154 at 18-19.

5. A true and correct copy of the June 10, 2021 correspondence from the Receiver Kelly Crawford to CFTC counsel is attached hereto as Exhibit 3.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 10, 2021, in Washington, DC.

  
\_\_\_\_\_  
Patricia Gomersall

# Exhibit 1

1 IN THE UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF TEXAS

3

4 )

COMMODITY FUTURES TRADING )

5 COMMISSION et al., )

)

6 Plaintiff, ) Case No.:  
3:20-CV-2910-L

7 vs. )

)

8 TMTE, INC. A/k/a METALS.COM, )

CHASE METALS, INC., CHASE )

9 METALS, LLC, BARRICK )

CAPITAL, INC., LUCAS THOMAS )

10 ERB a/k/a LUCAS ASHER a/k/a )

LUKE ASHER, and SIMON )

11 BATASHVILI )

)

12 Defendants. )

)

13 and )

)

14 Tower Equity, LLC, )

)

15 Relief Defendant )

)

16

17

18

REMOTE VIDEO-RECORDED DEPOSITION OF SIMON BATASHVILI

19

Wednesday, November 4, 2020

20

VOLUME I

21

22

Stenographically Reported by:

Mechelle S. Gonzalez

23

CSR No. 13250

Job No. 96641

24

25 PAGES 1 - 201

1 had a safe in my home. That is correct.

2 Q. Where is that safe today?

3 A. I believe it's still exactly where it was.

4 Q. Well, I can tell you I was just there last  
5 week, and it's not -- the house is vacated. It's  
6 not in the closet of your bedroom.

7 A. It's not there?

8 Q. No, sir, it's not.

9 A. Okay, sir. Well, I -- I didn't move it.

10 Q. Do you know who did?

11 A. I don't.

12 Q. Do you know where it is now?

13 A. I do not, sir.

14 Q. The order that we've marked as Exhibit 1  
15 also requires you to turn over any assets which you  
16 have possession or control of, over to me as  
17 receiver.

18 Other than the Shelby Mustang that I asked  
19 you to turn over, you have not turned over any  
20 assets to me. And why is that?

21 A. You've asked for me to turn over assets.  
22 You have access to information that's on the  
23 computer and in the office, I believe would be the  
24 reason why. I just don't have access to them.

25 Q. My question is: Why have you not turned

1 over any assets to me other than the Shelby Mustang?

2 A. I had -- I thought I had turned over the  
3 assets.

4 Q. What assets do you believe you turned over?

5 A. The Mustang and whatever else is -- I don't  
6 know. I can't remember.

7 Q. Simon, do you understand that under the  
8 court's order, it's your obligation to turn your  
9 assets over to me? It's not -- it's not my job to  
10 go try to find them and then ask you to turn them  
11 over before you turn them over.

12 Do you understand?

13 A. I -- I -- I understand that, Mr. Crawford,  
14 and I'm here to help.

15 Q. Well, what steps have you taken to turn  
16 over any assets to me?

17 A. It would -- it would be -- it would be  
18 helpful to have access to information so I can  
19 assist you.

20 Q. Well, we're here today. So, hopefully, you  
21 can assist me today, correct?

22 MR. SPENCER: I'm sorry. What's the  
23 question?

24 MR. CRAWFORD: My -- the question is, is  
25 whether or not he's willing to assist today in his

# Exhibit 2



1                   IN THE UNITED STATES DISTRICT COURT FOR THE  
 2                                   NORTHERN DISTRICT OF TEXAS  
    DALLAS DIVISION  
 3  
 4 COMMODITY FUTURES TRADING           )  
 COMMISSION, et al.,                    )  
   )  
 5                                   Plaintiff,                    )  
 vs.                                        ) Case No. 3:20-CV-2910-L  
 6                                        )  
 LUCAS THOMAS ERB also known        )  
 7 as LUCAS ASHER also known as        )  
 LUKE ASHER,                            )  
 8 TMTE, Inc., et al.,                    )  
   )  
 9                                   Defendants.                    )

10                                   -----  
    REPORTER'S TRANSCRIPT OF PROCEEDINGS  
 11  
    HAD ON FRIDAY, DECEMBER 4, 2020  
 12                                   CONTEMPT HEARING FOR LUCAS ASHER  
 13                   BEFORE THE HONORABLE SAM A. LINDSAY, JUDGE PRESIDING

14                                   A P P E A R A N C E S

15 MR. JONMARC PHILLIP BUFFA (By Video Teleconference)  
 MR. RICHARD P. FOELBER  
 16 Commodity Futures Trading Commission  
 1155 21st Street, NW  
 17 Washington, DC 20581  
 (202)418-5332  
 18 jbuffa@cftc.gov, rfoelber@cftc.gov

19 COUNSEL FOR THE COMMODITY FUTURES TRADING COMMISSION

20 MR. PETER C. LEWIS  
 MR. JAMES STAFFORD  
 21 MR. WALKER YOUNG  
 Scheef & Stone, LLP  
 22 500 N. Akard, Suite 2700  
 Dallas, TX 75201  
 23 (214)706-4241  
 peter.lewis@solidcounsel.com,  
 24 james.stafford@solidcounsel.com,  
 walker.young@solidcounsel.com

25 COUNSEL FOR THE RECEIVER

1 MR. SPENCER: Nothing further, Your Honor. Pass  
2 the witness.

3 THE COURT: Thank you.

4 Mr. Lewis, any questions?

5 MR. LEWIS: Nothing further, Your Honor.

6 THE COURT: Before we move off, there was a  
7 recording left by Mr. Asher. Do we have a hard copy of  
8 that?

9 MR. LEWIS: Well, Your Honor, we have it recited  
10 in the motion. I believe it is. It was transcribed for  
11 you. One second.

12 THE COURT: Okay, was it part of the exhibits or  
13 not? The recording was played, but I thought there was a  
14 transcript.

15 MR. LEWIS: Yes, Your Honor, it is Exhibit C to  
16 the declaration which is docket number 196, so Exhibit C.  
17 It is on the screen.

18 THE COURT: All right, it is on the screen now.  
19 Hold it right there then.

20 All right, that email was on September 28, 2020 at  
21 7:46 p.m. Mr. Asher, you can see that on the screen; can  
22 you not?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: We discussed this a little, but I may  
25 have a few questions. About midway in that paragraph,

1 the first paragraph, you state, quote, I deny that  
2 accusation. I am in full compliance with the Honorable  
3 Judge Lindsay's order, and I will continue to be in full  
4 compliance.

5 In reading that, you would agree, would you not, that  
6 at least as of September 28, 2020, you had read the order  
7 -- the statutory restraining order, you had read it; is  
8 that correct?

9 THE WITNESS: Yes, Your Honor, parts of it.

10 THE COURT: I guess that's what I find a bit  
11 troubling or perhaps not coming full circle. You said  
12 you had read parts of it. My question is this. For a  
13 person to boldly assert or declare that he or she is in  
14 full compliance with a court order, would not the person  
15 have to be familiar with what the order says?

16 THE WITNESS: Your Honor, I was under the  
17 impression that the order --

18 THE COURT: No, no, no, no. Let me drive up and  
19 blow the horn again. You are not hearing me. Once  
20 again, if a person tells me or tells you that I am in  
21 full compliance with this contract. Or I am in full  
22 compliance with the letter that sets out my  
23 responsibilities between the two of us. Is not the  
24 reasonable inference that can be drawn is that you are  
25 familiar with that document?

# Exhibit 3

**From:** [Buffa, JonMarc](#)  
**To:** [Gomersall, Patricia A.](#)  
**Subject:** FW: [EXTERNAL] Status of Batashvili contempt  
**Date:** Thursday, June 10, 2021 8:16:24 PM  
**Attachments:** [image001.png](#)  
[image003.png](#)

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**From:** Kelly Crawford <kelly.crawford@solidcounsel.com>  
**Sent:** Thursday, June 10, 2021 8:15 PM  
**To:** Foelber, Richard P. <rfoelber@CFTC.gov>; Buffa, JonMarc <JBuffa@CFTC.gov>  
**Subject:** [EXTERNAL] Status of Batashvili contempt

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To date, I have not received from Mr. Batashvili any of the information he promised to produce to me at this deposition that forms a basis for my motion for contempt.

To date, I have received one of two watches I traced to Mr. Batashvili, and a ring I traced to his wife Fainche. I received the Rolex Cosmograph that was valued at \$28,500. The Daytona Rolex valued at \$36,600 has not been produced to date.

With respect to the \$492,500 that Mr. Batashvili transferred in violation of the SRO, to date I have received the following wires:

- A wire of \$130,000 from Manana Batashvili on 5-24-21
- A wire of \$100,000 from Batashvili Management on 5-25-21
- A wire of \$86,000 from Batashvili Management on 6-2-21
- A wire of \$60,000 from Manana Batashvili on 6-10-21
- A wire of \$40,000 from Batashvili Management on 6-10-21

Total returned to date: \$416,000

The receivership is still missing \$76,500 that was hidden by Mr. Batashvili from me.

Thank you.

**Kelly Crawford** PARTNER

**Scheef & Stone, LLP**

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